SB CRIMINAL REVISION PETITION NO.89/2006.
Pawan Kumar Vs. State

6.9.2006.

**HON'BLE MR.JUSTICE HARBANS LAL**

Mr. Shanker Lal Sharma for the petitioner.
None present for the State.

This revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (here-in-after called in short 'the Cr.P.C.') has called in question the order dated 22.12.2005 passed by the learned Addl. District & Sessions Judge, Sambherlake Distt. Jaipur on a misc. application No.166/2000 in Sessions Case No.5/1998 vide which the application filed by the petitioner for transfer of the case to the Juvenile Court has been rejected holding that he was more than 16 years of age on the date of occurrence i.e. 14.8.1996.

The relevant facts are that the petitioner is facing trial on charges for the offences under Sections 304, 323 and 341 IPC before the above court in connection with an occurrence which took place on 14.8.1996. The trial is at its initial stage as after framing of the charges, no witness has been examined so far. He moved an application on 26.10.1998 for transfer of his case to the Juvenile Court on the ground that he was less than 16 years of age on the date of occurrence and was, therefore, a juvenile. He filed his affidavit and examined Ram Swaroop AW-1, Hanuman Prasad AW-2 and Bhanwar Lal Jain AW-3 and filed a photo-stat copy of the horoscope stating that the original horoscope was taken by the investigating officer during the

investigation and the same has not been submitted with the charge-sheet. He claims to have been born on 20.10.1980 as mentioned in the horoscope, but the said application was disallowed vide order dated 9.7.2002. SB Criminal Revision Petition No.308/2002 which was filed against the aforesaid order was allowed by this court and directions were given to hold inquiry about the age of the petitioner in the light of the observations/directions of this court given in the aforesaid order. But it is evident that no reference to the order of this court dated 9.7.2002 has been made nor the observations/ directions of this court given in the aforesaid order seem to have been followed and on the self same grounds and evidence, fresh order dated 22.12.2005 which is under challenge in this revision was passed.

It is inter-alia contended by the learned counsel for the petitioner which could not be controverted by the learned PP that the learned court below has not complied with the directions/ observations of this court. He has also pointed out that one of the methods to draw the conclusion about the age is ossification test but the same has not been adopted in this case. Therefore, the order under challenge is unsustainable and deserves to be quashed and set aside and the matter needs to be sent back to the learned court below for compliance of the directions/ observations of this court given in the order dated 9.7.2002. Learned PP also could not point out anything to the contrary.

I have considered the submissions made at the bar and have perused the relevant record.

As indicated above, it is not in dispute that Application No.166/2000 filed by and on behalf of the petitioner was rejected by the learned court below vide its order dated 5.2.2002 and the revision petition filed against the said order was allowed on 9.7.2002 wherein the secondary evidence of the horoscope was directed to be taken on record as per law and to pass fresh order in the light of the observations/ directions of this court. It also cannot be disputed that no reference has been made to the order of this court dated 9.7.2002 in the impugned order which has been passed after holding so called fresh inquiry. It is also a fact that no ossification test of the petitioner has been got conducted and it is one of the methods to draw the conclusion about the age when the same is in dispute. The inquiry regarding the age of the person claiming to be a juvenile delinquent is to be conducted by the competent authority which has been defined under Section 2(d) of the Juvenile Justice Act, 1986 and sub-section (3) to Section 7 provides that the powers conferred on the Board or Juvenile Court by or udner this Act may also be exercised by the High Court and the court of Session, when the proceeding comes before them in appeal, revision or otherwise. The order impugned, therefore, cannot be sustained as contended by the learned counsel for the petitioner and the matter needs to be remitted back to the court below for holding due inquiry regarding the age of the petitioner.

Consequently, this revision petition is allowed and the order dated 22.12.2005 passed by the learned Addl. District & Sessions Judge, Sambherlake Distt. Jaipur is hereby quashed and set aside. The matter is remitted back to him with the direction to conduct the inquiry regarding age of the petitioner as expeditiously as possible, but not in any case later than one month from the date of filing of the certified copy of this order complying with the directions/observations given in the order dated 9.7.2002 of this court and in the light of the observations made here-in-above.

**(HARBANS LAL)J.**